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WILL

OF

HENRY D. GILPIN

AND

ACCOMPANYING PAPERS RELATING TO THE GILPIN LIBRARY OF THE HISTORICAL SOCIETY OF PENNSYLVANIA.

PHILADELPHIA:
COLLINS PRINTING HOUSE, 705 JAYNE STREET.
1887.

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WILL OF HENRY D. GILPIN.

The Last Will and Testament of Henry D. Gilpin, of the City of Philadelphia.

I revoke every will and testament and instrument in the nature thereof, by me heretofore made; I direct my debts and funeral expenses to be paid. I desire to be buried at Laurel Hill Cemetery in my lot of ground there by the side of my father and with a similar tombstone, but somewhat smaller.

I appoint my wife Eliza Gilpin and my friends Charles Macalester and Charles Gilpin the Executors and Trustees of this Will and Testament. I give my Executors and Trustees power to sell, dispose of and make any compromises or arrangements in regard to my estate, real and personal (my wife assenting) which they consider necessary to carry into effect this will and testament, but in all such cases the entire amount of principal money that may be received by them shall be invested and re-invested at interest in public stocks of the City of Philadelphia, or the State of Pennsylvania, and especially in all payments coming to me from my property at Chicago. I request this may be always done in regard to the principal money as it is received. I especially desire that the settlement, division, and all arrangements in regard to my property

real and personal, at Chicago, which I shall possess at the time of my death, whether the same is held by me as Trustee for Charles Macalester and E. W. Clark, or in my own right or for my own share shall be made under the direction of my Executor the said Charles Macalester (he consulting my wife and other executors), but that everything in relation thereto shall be done in strict compliance with the provisions of the Declaration of Trust made and executed by and between the said Charles Macalester, Enoch W. Clark and myself on the fifth day of April, A. D. 1853. I have been indebted so much to the kindness and good judgment of my friend Charles Macalester, that I trust and am sure he will continue the same to my wife. I direct that my said Executors and Trustees be not required to give any security for the performance of any duties under this will and testament.

I give, devise and bequeath to my wife Eliza Gilpin (my gratitude to whom for all her affection no language can express), the entire income and proceeds of my whole estate real and personal during her life (requesting her, however, to pay therefrom to my dearest mother annually during her life the sum of two thousand five hundred dollars). I hereby authorize and empower my wife Eliza Gilpin to give, devise and bequeath by any instrument of writing signed before three persons of whom I wish, but do not require, my friend Charles Macalester to be one if he is living, the sum of one hundred thousand dollars of the principal of my estate; the said power and authority and the said gift, devise and bequest to take effect after her decease and not before. I leave to my wife this disposition of my property instead of expressing any wish

of my own, as she is acquainted with all my wishes; but these I do not desire to control her, but I desire her to exercise her own judgment in regard to the disposition of this sum of one hundred thousand dollars in every respect whatever. I give to her absolutely all my furniture of every description, plate and wines, except my books, manuscript and printed, and my pictures, statues and works of art, and of these she is to have the uncontrolled use and possession during her life. Should my dear mother outlive my wife, then I give her during her life the income of my estate.

I give, devise and bequeath (subject to the last recited gift, devise and bequest to my wife and mother, which I desire to be carried into full effect) to my Executors and Trustees above named and any substitute for any of them who may be legally appointed and the survivor of them, their and his heirs, executors and administrators all my estate real and personal in trust for the following purposes, that is to say: First, at such time as they may deem expedient, but within three years after the death of my wife or my mother, whichever shall survive to set aside or convert into money, at their discretion, such portion of my estate real and personal as shall in their opinion be at that time of the value of one hundred thousand dollars and then to pay over or deliver the same to such persons as my wife shall by such writing as is hereinbefore stated appoint, devise and bequeath. Secondly, if my wife shall fail to execute such writing, or the same be lost or mislaid, or there be any defect in its execution or from any cause it become inoperative (which I particularly desire my dear wife to guard against, it being my anxious wish that she shall devise, dispose of,

bequeath and appoint the distribution of the said portion of my estate real and personal, which I may leave at the time of my death), or if my wife and mother shall die before me, then in that event I hereby direct my said Executors and Trustees to divide, pay over and deliver at the period aforesaid the said portion of my estate real and personal, but no more, to such of the following persons as shall be then living and in the following amounts, that is to say to my brother Richard A. Gilpin twenty thousand dollars, to my grandson William S. Johnston twenty thousand dollars, to my sister Elizabeth Maury fifteen thousand dollars, to my sisters Sarah and Mary and to my brother William Gilpin ten thousand dollars each; to my niece Helena Sibley ten thousand dollars, and to my relative and namesake Henry D. Gilpin, Junior, five thousand dollars; and if any of the said persons shall be dead at the period aforesaid leaving children, the children shall then receive the parent's share, and if leaving no children then his or her share shall be divided equally among the said named persons then surviving. Thirdly, after the death of my dear wife and mother, whichever shall last occur, and after the entire payment and settlement of the last-mentioned gift devise and bequest of the said real and personal estate of the value of one hundred thousand dollars (but not before) then, as soon thereafter as may in the opinion of my said Executors and Trustees be expedient to divide, convey, pay over and appropriate the rest and residue of my estate, real and personal, as it then may be, in three equal parts, to wit:

First, one-third part to the President and eldest Vice-President for the time being of the Historical Society

of Pennsylvania to Richard A. Gilpin, Henry D. Gilpin, Junior, Charles Macalester and J. Francis Fisher the survivors and survivor of them, in trust to invest and re-invest the same at interest in public stocks of the City of Philadelphia and after a period of ten years (and as much longer as they may deem expedient) then to appropriate the income accumulated up to that time by such investment and re-investment to the erection by themselves or in such manner and plan as they shall approve, of a fire-proof Library building, to be a part of a fire-proof Edifice of the said Society, when one shall be erected, but to be in itself fire-proof entirely distinct from any other portion of the said edifice, though connected with and forming a part of it, and to be designated "The Gilpin Library of the Historical Society of Pennsylvania." After the said Edifice and building shall be entirely completed, then I direct the said last named Trustees and their successors to appropriate annually to the use of the said Gilpin Library the entire income of the said one-third part of the said rest and residue of my estate and to continue to invest and re-invest the principal of the same in the public stocks aforesaid. I authorize the said last named Trustees and their successors to make all rules and regulations for the establishment and conduct of the said Library co-operating with and having the assent of the said Historical Society; but I direct that none of the books or other articles be taken therefrom, but that the same be used (with liberal arrangements) by Students at the Library. I direct the Executors and Trustees of this Will and Testament to deliver to the said last named Trustees when they shall deem it expedient my entire library of books and manuscripts

which I may possess at my death to be placed in the said Library.

Second. One other third part of the said rest and residue of my estate real and personal to the President and eldest Director for the time being of the Pennsylvania Academy of the Fine Arts and to Richard A. Gilpin, Henry D. Gilpin, Junior, Charles Macalester and J. Francis Fisher, and the survivors and survivor of them in trust to invest and re-invest the same at interest in the public stocks aforesaid and after a period of Ten years (and as much longer as they may deem expedient) then to appropriate the income accumulated up to that time by such investment and re-investment to the erection by themselves or in such manner and plan as they shall approve of a fire-proof Gallery of the Fine Arts to be a part of a fire-proof Edifice of the said Academy when one shall be erected but to be in itself fire-proof entirely distinct from any other portion of the said edifice, though connected with and forming a part of it and to be designated "The Gilpin Gallery of the Pennsylvania Academy of the Fine Arts." After the said Edifice and building shall be entirely completed then I direct the said last named trustees and their successors to appropriate annually to the use of the said Gilpin Gallery the entire income of the said last-mentioned one-third part of the said rest and residue of my estate and to continue to invest and re-invest the principal of the same in the public stocks aforesaid. I authorize the said last named Trustees and their successors to make all rules and regulations for the conduct and establishment of the said Gallery co-operating with and having the assent of the Board of Directors of the Pennsylvania Academy of the Fine Arts; but I

direct that the said last named Trustees and their successors shall always in every year pay over at least one-half of the said income to artists in painting, sculpture and architecture for the best works, models and designs in their respective branches of art, such premiums to be awarded after such public competition as the said last named Trustees and their successors deem suitable, provided that such work, model or design be absolutely given on the payment or delivery of the premiums to the said "Gilpin Gallery of the Pennsylvania Academy of the Fine Arts" to be placed and retained therein as the property of the said last named trustees forever. I request the Executors and Trustees of this will and testament to deliver to the said last named Trustees all my pictures, statuary and works of the fine arts which I may possess at my death, including if she will permit it, my Wife's own Portrait and Statue to be placed in and never to be taken from the said Gallery.

Third. The remaining third part of the said rest and residue of my estate, real and personal, to the President and eldest Vice-president or Director of the Historical Society of Chicago for the time being and to Richard A. Gilpin, Henry D. Gilpin, Junior, and Charles Macalester, of Philadelphia, and William B. Ogden, of Chicago, and the survivor and survivors of them in trust to invest and re-invest the same at interest in the public stocks of the City of Chicago, and after a period of ten years (and as much longer as they may deem expedient) then to appropriate the income accumulated up to that time by such investment and re-investment to the erection by themselves or in such manner and plan as they shall approve of a fire-proof

Library building to be a part of a fire-proof Edifice of the said Society, when one shall be erected but to be in itself fire-proof entirely distinct from any other portion of the said edifice though connected with and forming a part of it and to be designated "The Gilpin Library of the Historical Society of Chicago." After the said Edifice and building shall be entirely completed then I direct the said last named Trustees and their successors to appropriate annually to the use of the said Gilpin Library the entire income of the said last mentioned third part of the said rest and residue of my estate real and personal and to continue to invest and re-invest the principal of the same in the public stocks last mentioned. I authorize the said last named Trustees and their successors to appropriate annually to the use of the said last mentioned Gilpin Library the entire income of the said one-third part of the said rest and residue of my estate and to continue to invest and re-invest the principal of the same in the public stocks aforesaid. I authorize the said last named Trustees and their successors to make all rules and regulations for the establishment and conduct of the said Library co-operating with and having the assent of the said Historical Society; but I direct that none of the books or other articles be taken therefrom, but that the same be used (with liberal arrangements) by Students at the Library.

I authorize a majority of the Trustees and Executors (my wife if living being one) to act for the whole. If a vacancy shall occur in any of the foregoing Trusts, I desire the same to be filled by the remaining Trustees of such trust or a majority of them (my wife if living being one) and the same being confirmed by a

Court at Philadelphia or Chicago as the case may be, having jurisdiction over the subject. Any person who, in the opinion of a court of competent jurisdiction in Philadelphia or Chicago, as the case may be, (who) shall be interested in the proper management of either of the said three last named Trusts may apply to such court for an examination thereof which such Court may in its discretion direct and any report thereon shall be published. The Trustees of each of the three last named Trusts shall make to such Courts annually and publish a full report of the state of the Trust. In all cases where the Trustees of either of the said three last named Trusts shall confide to any person the collection or disbursement of money, they shall first receive security in such sum as they deem proper for a faithful fulfilment of such undertaking, and indemnity against all losses.

In witness whereof, I have hereto set my hand and seal to this instrument as my last Will and Testament, written on three pages of paper, each bearing my own signature at Philadelphia this Seventeenth day of January in the year of our Lord one thousand eight hundred and sixty.

H. D. GILPIN. [SEAL.]

MEMORANDUM OF AGREEMENT WITH HEIRS.

MEMORANDUM OF AGREEMENT made the seventh day of December in the year of our Lord one thousand eight hundred and seventy-four. Between the subscribers the parties interested in the estate which was of Henry D. Gilpin, Esq., deceased, for the distribution thereof and for the settlement of the several questions and controversies between the said parties which have arisen or may arise in relation thereto whether under the last will and testament of the said Henry D. Gilpin or under that of his widow Eliza Gilpin, late deceased.

It is agreed that Henry D. Gilpin, Junior, and Helena Flournoy, late Helena Sibley shall be paid the legacies of five thousand dollars and ten thousand dollars to them respectively given and appointed to be paid by the will of the said Eliza Gilpin.

It is also agreed that William S. Johnston shall be paid the two legacies of twenty thousand dollars each given and appointed to be paid him by the last-mentioned will without regard to the happening of the contingency affecting his right to receive the second one.

The said William S. Johnston shall also be paid in addition to the above mentioned sums sixty per

centum of the legacy of ten thousand dollars conditionally appointed to be paid him by the said last mentioned will and sixty per centum of the residue and remainder of the estate and property devised to the said Eliza Gilpin by virtue of the will of the said Henry D. Gilpin, to wit, of the sum of seventeen thousand dollars, which residue and remainder was by the will of the said Eliza Gilpin given and appointed to him the said William S. Johnston.

It is further agreed that the rector, church wardens, and vestrymen of St. Andrew's Church in the city of Philadelphia, Eliza Gilpin McLean, Josiah S. Johnston of Kentucky, and William Preston Johnston shall each be paid sixty per centum of the legacies of one thousand dollars, four thousand dollars, eight thousand dollars, and five thousand dollars to them respectively in certain contingencies given and appointed to be paid by the will of the said Eliza Gilpin.

The Fidelity Insurance, Trust, and Safe Deposit Company of Philadelphia and Isaac Hazlehurst, Esquire, executors and trustees under the said last will of Eliza Gilpin, deceased, shall be paid the sum of eighteen thousand dollars, being forty per centum of a certain residue amounting to forty-five thousand dollars, which residue was given and appointed by the will of the said Eliza Gilpin in certain contingencies to the said executors and trustees in trust for the use and benefit in equal parts of the Historical Society of Pennsylvania, the Historical Society of Chicago, and the Pennsylvania Academy of the Fine Arts.

And the said the Fidelity Insurance, Trust, and Safe Deposit Company of Philadelphia and Isaac Hazlehurst, Esquire, executors and trustees as aforesaid,

in the exercise of the discretion given them by the will of the said Eliza Gilpin, hereby agree that the sum of eighteen thousand dollars, being forty per centum of the said residuum of forty-five thousand dollars, shall be awarded and paid to the said three corporations above named in equal parts.

The commissions of the said executors and trustees in respect to their administration of the fund as to which under the will of the said Henry D. Gilpin the said Eliza Gilpin possessed and by her said will exercised a power of appointment, shall be paid out of the general residue of the fund now for distribution.

Subject to the payment of the several sums above mentioned the whole residue and remainder of the estate and property which was of the said Henry D. Gilpin, deceased, whether the same is now or shall hereafter be for distribution as the same now is or shall exist or the proceeds be received shall be equally divided between the heirs and next of kin of the said Henry D. Gilpin and the residuary legatees and devisees under the will of Mrs. Mary Gilpin, deceased, and their respective executors, administrators, and assigns as they shall agree among themselves of the one part and the survivors of the trustees severally named in the will of the said Henry D. Gilpin, deceased, for the Historical Society of Pennsylvania, for the Pennsylvania Academy of the Fine Arts, and for the Historical Society of Chicago in equal shares for the uses and trusts set forth in the will of the said Henry D. Gilpin of the other part.

All of the powers for the conversion of such part of the estate of the said Henry D. Gilpin, deceased, as

may be realty into personalty are hereby confirmed to his executors and to the trustees of such realty.

It is further agreed that each of the payments hereinbefore provided for shall be made subject to the proper deduction for the collateral inheritance tax chargeable thereupon.

Such of the parties to this agreement as are acting in a fiduciary capacity with a view to carry it into effect agree to apply forthwith for the approval and sanction of the proper Court to the compromise now made, but their execution hereof shall impose no liability upon them unless the proper Court shall confirm and sanction such compromise.

When such approval and sanction shall have been given it is agreed that the auditor appointed by the Court shall make distribution of the estate now in the hands of or hereafter to be received by the surviving executor of the will of the said Henry D. Gilpin, deceased, in accordance with the terms of this agreement.

In witness whereof the parties have interchangeably set their hands and seals hereto the day and year first above written.

MODIFICATION OF TRUST.

To the Honorable the Judges of the Court of Common Pleas No. , for the County of Philadelphia.

The petition of John William Wallace, President of the Historical Society of Pennsylvania, John Jordan, Jr., eldest Vice-President of the said society, and Richard A. Gilpin, surviving and remaining trustees for the Gilpin Library of the said society under the last will and testament of the Honorable Henry D. Gilpin, deceased, respectfully represents—

1. That the said Henry D. Gilpin died in the latter part of the month of January, A. D. 1860, having first made his last will and testament dated the 17th day of January, immediately preceding, and duly proved before the Register of Wills at Philadelphia, on the 3d day of February, A. D. 1860.

2. That in and by his said last will and testament, after appointing his wife, Eliza Gilpin, and his friends, Charles Macalester and Charles Gilpin, executors and trustees thereof, *inter alia*, he gave, devised, and bequeathed the entire income and proceeds of his whole estate, real and personal, to his said wife during her life, requesting her to pay therefrom to his mother annually during her life the sum of $2,500.

3. That he further authorized and empowered his

said wife to give, devise, and bequeath by any instrument of writing signed before three persons the sum of $100,000 of the principal of his estate, the said power and authority, and the said gift, devise, and bequest to take effect after her decease and not before; and he further provided, that should his mother outlive his wife she should enjoy during her life the income of his estate.

4. Subject to the gift, devise, and bequest to his wife and mother, he gave, devised, and bequeathed to his said executors and any substitute for them who might be legally appointed, and the survivor of them, their, and his heirs, executors, and administrators, all his estate, real and personal, in trust.

First, That they should at such time as they might deem expedient, but within three years after the death of his wife or mother, whichever should survive, set aside or convert into money, at their discretion, such portion of his estate, real and personal, as should in their opinion be at that time of the value of $100,000, and then pay over or deliver the same to such persons as his wife should by such writing as was thereinbefore stated, appoint, devise, and bequeath.

Secondly, That if his said wife should fail to execute such writing, or the same should be lost or mislaid, or there should be any defect in its execution, or from any cause it should become inoperative, or if his wife or mother should die before him, then, in that event, he did thereby direct his said executors and trustees to divide, pay over, and deliver, at the period aforesaid, the said portion of his estate, real and personal, to certain persons in his said will named in the amounts and proportions therein set forth; and,

Thirdly, After the death of his wife and mother, whichever should occur last, and after the entire settlement and payment of the said gift, devise, and bequest of the real and personal estate of the value of $100,000, and whenever his said executors and trustees should deem it expedient, he further directed his said executors and trustees to divide, convey, pay over, and appropriate the rest and residue of his estate, real and personal, as it then might be in three equal parts, to wit:—

First, One-third part to the President and eldest Vice-President for the time being of the Historical Society of Pennsylvania, to Richard A. Gilpin, Henry D. Gilpin, Jr., Charles Macalester, and J. Francis Fisher, and the survivor of them in trust, to invest and reinvest the same at interest in the public stocks of the city of Philadelphia, and after a period of ten years (and as much longer as they might deem expedient) then to appropriate the income accumulated up to that time by such investment and reinvestment to the erection by themselves, or in such manner and plan as they should approve, of a fire-proof Library, the building to be part of a fire-proof edifice of the said society, when one should be erected, but to be in itself fire-proof, entirely distinct from any other portion of the said edifice though connected with and forming a part of it, and to be designated "The Gilpin Library of the Historical Society of Pennsylvania."

And the said testator further directed that after the said edifice and building should be entirely completed then the said last named trustees and their successors should appropriate annually to the use of the said Gilpin Library the entire income of the said one-third

part of the said rest and residue of his estate, and should continue to invest and reinvest the principal of the same in the public stocks aforesaid.

And the said testator further authorized the said last named trustees to make all rules and regulations for the establishment and conduct of the said Library, co-operating with and having the assent of the said Historical Society, but he directed that none of the books or other articles should be taken therefrom, but that the same should be used with liberal arrangements by students at the Library.

And he further directed the executors and trustees of his said last will and testament to deliver to the said last named trustees, when they should deem expedient, his entire library of books and manuscripts which he might possess at his death to be placed in the said Library.

Second. One-third part of the said rest and residue of his estate, real and personal, to the President and eldest Director for the time being of the Pennsylvania Academy of the Fine Arts, and to Richard A. Gilpin, Henry D. Gilpin, Jr., Charles Macalester, and J. Francis Fisher, and the survivors and survivor of them in trust for the special uses and purposes in connection with the said Academy set forth in his said last will and testament with regard to the said last-mentioned one-third part of his residuary estate; and

Third. The remaining third part of the said rest and residue of his estate, real and personal, to the President and eldest Vice-President or Director of the Historical Society of Chicago, for the time being, and to Richard A. Gilpin, Henry D. Gilpin, Jr., and Charles Macalester, of the city of Philadelphia, and William B. Ogden,

of Chicago, and the survivors or survivor of them in trust for the special uses and purposes in connection with the said Society, set forth in his said last will and testament with regard to the said remaining third part of his residuary estate.

5. That Mary Gilpin, the mother of the testator, survived him, but died during the lifetime of his wife, the said Eliza Gilpin.

6. That the said Eliza Gilpin died on the 12th day of February, 1874, having first made and executed her last will and testament dated the 19th day of September, 1873, which with a codicil thereto, dated the 22d day of December, 1873, was duly proved at Philadelphia on the 17th day of February, 1874, wherein and whereby she did in due form execute the power of appointment given her by the will of the said Henry D. Gilpin, deceased, as to the said sum of $100,000 therein mentioned.

7. That the said Charles Macalester and the said J. Francis Fisher, trustees as aforesaid, are now deceased, and the said Henry D. Gilpin, Jr., was on his own petition, on the day of May, 1875, by order of the Orphans' Court, discharged from his office as trustee under the will of the said Henry D. Gilpin, deceased, whereby the present petitioners were left surviving and remaining trustees as aforesaid.

8. That Charles Gilpin, the surviving executor of the will of the said Henry D. Gilpin, deceased, having filed his seventh account of the estate of the said decedent, the same was referred to George Junkin, Esq., as auditor, to settle and adjust the same and to report to the Court distribution of the balance in the hands of the said surviving executor.

9. That forasmuch as the last will and testament of the said Henry D. Gilpin was executed less than one calendar month before his decease, it became doubtful whether the gift, devise, and bequest therein contained of his residuary estate to the said trustees for the uses and purposes connected with the Historical Society of Pennsylvania, the Pennsylvania Academy of the Fine Arts, and the Historical Society of Chicago, respectively, did not, at least so far as the said residuary estate was at the time of the testator's death subject to the jurisdiction of this Commonwealth, become void and of none effect, and the said residuary estate go to his next of kin and heirs according to law. And that the said auditor, to whom the accounts were referred ultimately on a collateral issue, decided that the said gift, devise, and bequest to the extent mentioned, did so become void, and the said residuary estate did so go.

10. Wherefore all of the parties interested in the estate which was of the said Henry D. Gilpin, deceased, did, on the 7th day of December, 1874, enter into an agreement for the distribution thereof, and for the settlement of the several questions and controversies which had arisen or might arise between them in relation thereto, whether under the last will and testament of the said Henry D. Gilpin, or under that of his widow, the said Eliza Gilpin, then deceased, which agreement, so far as concerned the parties thereto who acted in a fiduciary capacity, was afterwards, on the petition of the said parties, to wit, on the day of , 1875, duly approved and sanctioned by the Orphans' Court for the County of Philadelphia, in conformity with the provisions thereof.

11. That by the terms of the said agreement it was

provided, among other things, that the whole residuary estate of the said Henry D. Gilpin, whether the same was then or should be thereafter for distribution as the same then was or should exist, or the proceeds be received, was to be equally divided between the heirs and next of kin of the said Henry D. Gilpin and the residuary legatees and devisees under the will of Mrs. Mary Gilpin, then deceased, and their respective executors, administrators, and assigns, as they should agree among themselves, of the one part, and the survivors of the trustees severally named in the will of the said Henry D. Gilpin for the Historical Society of Pennsylvania, for the Pennsylvania Academy of the Fine Arts, and for the Historical Society of Chicago, in equal shares for the uses and trusts set forth in the will of the said Henry D. Gilpin, of the other part.

12. That the said auditor made distribution of the estate of the said Henry D. Gilpin, so far as the same was embraced in the accounts referred to him, in accordance with the provisions of the said agreement, and filed his report on the said account on the 8th day of May, 1875, and the same was duly confirmed by the Orphans' Court on the 22d day of the same month and year.

13. By this report the sum of $29,552.22 was awarded to J. W. Wallace and others, trustees as aforesaid for the Gilpin Library of the Historical Society of Pennsylvania. This sum, with the further sum of about $30,000 to be hereafter received by the petitioners as their proportion of the unadministered estate of the testator, will, after the deduction of the proper charges for the execution of the trust, form the corpus of the trust estate confided to their care and

applicable to the uses and purposes set forth with regard thereto in his last will and testament.

14. Your petitioners further show to the Court that the said Library, consisting of about 17,000 volumes, still remains undisposed of in the hands of the said surviving executor, and that one-sixth of the same, in specie or in value, will, under the said agreement, come to your petitioners in the due course of the administration of the estate of the decedent.

15. That the said testator, though he attached great and peculiar value to his collection of books and manuscripts, did not in his said will make any provision whatever for its preservation, use, or accretion, during the time prescribed for the accumulation of the income of the trust estate, or during that afterwards necessary for the erection of the fire-proof edifice to be built with the results of such accumulation.

16. And your petitioners further say that the Historical Society of Pennsylvania now occupies, under lease from the Managers of the Pennsylvania Hospital, a building on the south side of Spruce Street between Eighth and Ninth Streets, in this city, which is well suited for its purposes and sufficient for its accommodation as well as for that of the Trustees of the Gilpin Library of the said society, but which is not fire-proof.

17. That the said society does not own any fire-proof edifice, nor as your petitioners are advised has it nor is it likely to have for a long time to come, a time much longer than ten years, either the intention or ability to build one wherewith that contemplated by the will of the testator may be connected, or of which it shall form part.

And that it is wholly uncertain whether or not the

said society, even if it should at a future time erect such an edifice, will then consent to the connection therewith of a fire-proof building for the use of the Gilpin Library on terms satisfactory to the trustees therefor for the time being.

Or if it should be willing to do so whether or not it would co-operate with the said trustees in the making of rules and regulations for the establishment and conduct of the said Library.

18. Your petitioners further say, that by reason of the failure of the provisions made by the testator for the charity to the extent of one-half the capital value thereof, the construction of a fire-proof edifice for the Gilpin Library, from accumulation of the income of the trust funds, in connection with one to be erected by the said Historical Society, would be postponed, under any circumstances, for a very much longer time than the term of ten years contemplated by the testator.

19. Your petitioners further suggest to the Court, that it is plainly apparent from the foregoing recital, that the particular modes pointed out by the will of the testator, for the execution of the said trusts, are impracticable, uncertain, and inadequate to the carrying out of the same, according to the general intent and scope thereof.

20. Your petitioners therefore, in order that they may safely and properly discharge their duties as trustees, and that the charity intrusted to their care may not fail, but be carried out as far as possible according to the design of the testator, pray the advice and direction of the Court as a Chancellor in the premises, and ask that they may be decreed authority to enter into an agreement with the said Historical

Society of Pennsylvania for the leasing of such part of the present or any future hall of the said Society as they may deem expedient for the use of the said Gilpin Library, on such terms as may be mutually agreed on, and that they may have leave to apply so much of the income of the trust estate as may be necessary to the payment of the rent therefor, and to appropriate the remainder of the said income to the use of the said Gilpin Library, according to the directions of the will of the said testator.

JOHN WM. WALLACE.
JOHN JORDAN, Jr.,
Vice-President.
RICHARD A. GILPIN,
Trustee.

And now, to wit, October 28, 1876, decree made in the following words to wit:—

In the matter of the petition of John William Wallace, President of the Historical Society of Pennsylvania, John Jordan, Jr., eldest Vice-President of the said Society, and Richard A. Gilpin, Trustees for the Gilpin Library of the said Society.

And now, October 28, 1876, the foregoing petition and report of the Master thereupon, with the evidence in the case, having been read and duly considered, it is ordered, adjudged, and decreed that the said report be confirmed, and it is now confirmed accordingly.

And it is further ordered, adjudged, and decreed—

First. That the Trustees of the Gilpin Library are hereby authorized to enter into an agreement with

the Historical Society of Pennsylvania, for leasing such part of the present or any future building occupied by the said Society, as they may deem expedient for the use of the Gilpin Library of the Historical Society of Pennsylvania, on such terms as they may be mutually agreed on.

Secondly. That the Trustees of the Gilpin Library have leave to apply so much of the income of the trust estate as may be necessary to the payment thereof, and

Thirdly. To appropriate the remainder of the said income to the use of the said Gilpin Library according to the directions of the will of the said decedent, which are subsequent to those relating to the accumulation of the fund and the erection of a fire-proof library building with the proceeds thereof, including the proper fitting up and care of the library room, the purchasing of books, the binding of the same when necessary to be done, and the employment of a proper person as Librarian, at a salary to be fixed upon by the Trustees, and

Fourthly. That they shall have leave to apply to the Court for any further directions in case they should desire the same.

JOSEPH ALLISON.

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